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**Federal Communications Commission**

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**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	File No. EB-02-DT-987
CenturyTel Wireless of Michigan	)	
RSA #1&2, Inc.	)	NAL/Acct. No. 200332360002
	)	
Vancouver, Washington	)	FRN: 0004-5240-96

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: November 08, 2002**

By the District Director, Detroit Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that CenturyTel Wireless of Michigan RSA #1&2, Inc. (“CenturyTel”), has apparently violated Section 303(q) of the Communications Act of 1934 (“Act”), as amended,<sup>1</sup> and Sections 17.48(a) and 17.51(b) of the Commission’s Rules<sup>2</sup> (the “Rules”) by failing to exhibit top obstruction lighting on their tower, and failing to report it’s outage to the nearest Flight Service Station or office of the Federal Aviation Administration (“FAA”). We conclude that CenturyTel is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

**II. BACKGROUND**

2. On July 30, 2002, agents from the Detroit Office conducted an inspection of the antenna structure located at the junction of Hwy. M77 and Hwy. M28 Seney, Michigan, Antenna Structure Registration Number (“ASR”) 1013927, (located at north latitude 46° 20’ 36”, west longitude 085° 57’ 38”). The tower exceeds 200 feet in height and must, therefore, be painted and illuminated in accordance with Section 17.21 of the Rules.<sup>3</sup> The agents observed that the top obstruction light was not on or flashing. The FCC agents returned on August 1, 2002 to the tower site and again observed that the top obstruction light was not on or flashing.

3. On August 6, 2002, an FCC agent placed a telephone call to the FAA Flight Service Station in Lansing, Michigan, and determined that CenturyTel had not notified the FAA of the tower light outage.

**III. DISCUSSION**

4. Section 303(q) of the Act, as amended, requires tower owners to maintain the painting and/or illumination of the tower as prescribed by the Commission. Section 17.48(a) requires reporting the tower

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<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.48(a) and 17.51(b).

<sup>3</sup> 47 C.F.R. § 17.21.

## Federal Communications Commission

light outage to the FAA and Section 17.51(b) requires medium or high intensity lighting to be continuously displayed.

5. Based on the evidence before us, we find that CenturyTel has willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Section 303(q) of the Act, as amended, by failure to maintain the prescribed illumination of its antenna tower; Section 17.48(a) for failing to report the tower light outage to the FAA; and Section 17.51(b) for failing to continuously exhibit medium or high intensity lighting. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon denied*, 15 FCC Rcd 303 (1999), (*"Forfeiture Policy Statement"*), sets the base forfeiture amount at ten thousand dollars (\$10,000), for failure to comply with prescribed lighting and/or marking; and three thousand dollars (\$3,000) for failure to file required forms or information.<sup>6</sup> In accessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>7</sup> which include the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history or prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we believe that a thirteen thousand (\$13,000) monetary forfeiture is warranted.

### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80 of the Rules,<sup>8</sup> CenturyTel Wireless of Michigan RSA #1&2, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 303(q) of the Act, and Sections 17.48(a) and 17.51(b) of the Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, CenturyTel SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332360002, FRN: 0004-5240-96.

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<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provide that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty by the United States." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. §§ 0.111, and 0.311.

## Federal Communications Commission

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. 200332360002, FRN: 0004-5240-96.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to CenturyTel at P.O. Box 9901, Vancouver, Washington 98668.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater  
District Director, Detroit Office  
Enforcement Bureau

Attachment A - FCC List of Small Entities, October 2002

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<sup>9</sup> See 47 C.F.R. § 1.1914.